IN THE SUPREME COURT OF MICHIGAN

STATE OF MICHIGAN

ADM # 2003-47

SUPPLEMENTAL STATEMENT OF ASBESTOS PLAINTIFFS REPRESENTED BY GOLDBERG, PERSKY & WHITE, P.C. IN OPPOSITION TO PROPOSAL TO ESTABLISH A STATEWIDE INACTIVE ASBESTOS DOCKETING SYSTEM

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SUPPLEMENTAL STATEMENT OF ASBESTOS VICTIMS REPRESENTED BY GOLDBERG, PERSKY & WHITE, P.C.

INTRODUCTION

Those asbestos victims represented by the law firm of Goldberg, Persky & White, P.C., submitted a Statement In Opposition to the Supreme Court's Proposal to Establish Statewide Inactive Asbestos Docketing System, via e-mail on May 20, 2006. Public Comment with respect to this Proposed Administrative Order occurred on May 24, 2006. The following is offered as further Opposition to the Proposed Administrative Orders and in response to certain questions posed by the Justices of the Supreme Court during the Public Comments on May 24, 2006.

"BUNDLING"

As this Honorable Court is aware, there were at least several questions posed to various witnesses regarding "bundling" of cases. This term, "bundling", appears nowhere in either Alternative A or Alternative B, and to the best of the undersigned's knowledge, is not a legal term.

However, Justice Young defined this term during his questioning of Attorney McCallum, namely that bundling was the use of a "serious case" to "leverage" resolution of a less serious case or cases. The Court will recall that Mr. McCallum, whose office represents at least six asbestos defendants in asbestos litigation in Michigan, replied that, in the abstract, he believed that such "bundling", as defined by Justice Young, was unfair. Significantly, however, Attorney McCallum indicated that "bundling" as defined by Justice Young, simply did not take place in asbestos litigation between clients in Mr. McCallum's firm and clients of Goldberg, Persky & White, Law Offices, and Michael Serling Law Offices and Margaret Jensen Hohman, Esquire.

The concept of "bundling", again, as defined by Justice Young during his questioning of various witnesses, would, in fact, be problematic as it would raise several issues under the Rules of Professional Responsibility. As Mr. McCallum indicated, such "bundling" of cases **does not** occur in the state of Michigan. Counsel to plaintiffs have an absolute obligation to zealously represent each and every client to the fullest of their ability and without regard to the impact of one client's case on another. Moreover, the defendants, too, have an absolute duty to their clients to individually consider each single case on its merits. The pre-trial discovery in asbestos cases, which is conducted pursuant to the Wayne County Circuit Court's Case Management Order, provides both parties with an abundance of information specific to each and every plaintiff and each and every defendant. When cases are scheduled for trial, each individual case is reviewed on its' merits, both in terms of the evidence of disease and in terms of specific plaintiff's exposure to specific defendants' products. Depositions of the plaintiffs are reviewed,

Interrogatories Answers of both parties are considered and, at the end of the day, the cases are each resolved on their own merits.

"BUNDLING" OR CONSOLIDATION?

As this Honorable Court is well aware, the Trial Court is vested with discretion when determining whether to consolidate civil actions under the Michigan Court Rules and Common Law. Pre-trial Consolidation has been the rule in asbestos cases for the last two decades in Michigan, a rule agreed to by all parties as being the most intelligent and efficient way to litigate asbestos exposure claims.

The Trial Court, in the exercise of its' discretion, can not only consolidate similar cases for pre-trial discovery purposes, but also has the discretion to consolidate certain cases for trial. The decision of whether to consolidate and which cases to consolidate for trial is, we respectfully submit, within the discretion of the Trial Court. In practice in Wayne County and elsewhere in Michigan, the Trial Courts' discretion in choosing which cases to consolidate for trial in the unlikely event that a full settlement with all parties have not been reached is exercised judiciously to promote settlement and decrease transactional costs to all involved, including the Court.

The questions during the Public Comments regarding "bundling" seemed to invoke the legal issue of Consolidation. Without the discretion to order pre-trial or trial consolidation of similar actions, the parties would be forced to duplicate proofs in nearly every case. This certainly would not be in the best interest of judicial economy and would create a litigation crisis where none now exists.

Simply stated, to the extent that this Honorable Court's references to "bundling" invoke instead the issue of the Trial Court's discretion to consolidate similar cases, we believe that the Trial Courts in Michigan have exercised this discretion judiciously. This is born out by the fact that there has not been an asbestos trial to verdict in the state of Michigan in over seven years.

IF THE COURT ADOPTS EITHER ALTERNATIVE A OR ALTERNATIVE B, THE MEDICAL ASPECTS OF EITHER ALTERNATIVE MUST BE CONSISTENT WITH THE CURRENT STATE OF MEDICAL SCIENCE

Dr. Kenneth Rosenmen offered comments to this Honorable Court at the May 24, 2006 hearing. According to Dr. Rosenmen, the medical criteria set forth in both of this Honorable Court's Alternatives are simply contrary to the standard of care in the state of Michigan for the diagnosis and treatment of asbestos related diseases. When questioned by Justice Young about whether there was a widely accepted and reliable medical criteria for asbestos disease, Dr. Rosenmen directed the Court's attention to the American Thoracic Society's position paper on

this issue. Dr. Rosenmen testified that under the medical criteria in this Court's Alternatives A and B, individuals could be hospitalized due to non-cancerous asbestos disease but not be sufficiently ill to pursue a claim in court against the culpable parties. This is so, because the medical criteria in this Honorable Court's Alternatives is outdated, is medically unreasonable (recall the discussion of Quality One vs. Quality Two or Quality Three x-rays) and is exclusionary. If this Court is to adopt either Alternative with medical criteria to distinguish between active and inactive cases or "Tier I" or "Tier II" cases, those medical criteria should be in agreement with medical science, should reflect the most up-to-date medical science as set forth in the American Thoracic Society's Position Statement, and should not be arbitrarily exclusionary.

CONCLUSION

Petitioners wish to thank this Honorable Court for providing us with the opportunity to not only speak at the May 24, 2006 hearing, but also, to consider this and other submissions from Goldberg, Persky & White, P.C. The Asbestos Victims represented by Goldberg, Persky and White, P. C. strongly oppose and object to either of the proposed Alternatives, but are grateful for the opportunity to be heard.

Respectfully Submitted,

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